**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**

**HON'BLE Ms. JUSTICE G. ROHINI**

**Writ Appeal Nos. 2342, 2343, 2344, 2345, 2346, 2347 and 2348 of 2003**
**and Writ Petition Nos. 7214 and 7215 of 2006**

**Writ Appeal No.2342 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

... Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

... Respondents

**Writ Appeal No.2343 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

... Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

... Respondents

**Writ Appeal No.2344 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

... Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

… Respondents

**Writ Appeal No.2345 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

… Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

… Respondents

**Writ Appeal No.2346 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

… Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

… Respondents

**Writ Appeal No.2347 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

… Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

… Respondents

**Writ Appeal No.2348 of 2003**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam, rep., by its
Deputy Secretary, Sri M. Sankar Babu,
S/o. M. Ramana Rao, Aged 33 years,
R/o. Visakhapatnam

... Appellant

**And**

The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another

... Respondents

**Writ Petition No.7214 of 2006**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam

... Petitioner

**And**

The Industrial Tribunal-cum-Labour Court
at Hyderabad and another

... Respondents

**Writ Petition No.7215 of 2006**

**Between:**

Visakhapatnam Port Trust,
Visakhapatnam

... Petitioner

**And**

The Industrial Tribunal-cum-Labour Court
at Hyderabad and three others

... Respondents

Counsel for the appellant : Shri P. Sri Raghu Ram
(In all the appeals)

Counsel for respondent No.2 : Smt. A. Padma
(In all the appeals)

Counsel for the petitioner : Shri P. Sri Raghu Ram
(In both the writ petitions)

Counsel for respondent No.2 : Smt. A. Padma
(In W.P No. 7214 of 2006)

Counsel for respondent Nos.2 to 4: Smt. A. Padma
(In W.P. No. 7215 of 2006)

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**::JUDGMENT::**

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**October 31, 2007**

**Per G.S. Singhvi, CJ**

Whether the employees of Visakhapatnam Port Trust (for short, 'the Port Trust'), who applied for retirement in accordance with the Voluntary Retirement Scheme (short short, 'VRS') contained in letter No.LB-16016/7/88-L.II, dated 29-8-1991 sent by the Government of India to the Chairman of the Port Trust are entitled to three months' notice pay in terms of para 2(c)(iv) thereof irrespective of the dates on which their applications were accepted and they were relieved is the question which arises for determination in these appeals and writ petitions filed against order dated 7-11-2003 passed by the learned Single Judge in Writ Petition No.15113 of 2003 and batch and orders dated 30-12-2005 passed by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (hereinafter described as 'the Labour Court).

For the sake of convenience, we have taken the facts from the paper book of Writ Appeal No.2347 of 2003.

Sri A. Chittibabu, who was employed in the services of the Port Trust, submitted application dated 8-5-1995 for voluntary retirement in accordance with the policy contained in letter dated 29-8-1991. The competent authority

accepted his application on 28-11-1995 and he was relieved on 1-12-1995. Simultaneously, he was paid all terminal benefits specified in para 2(c) of the policy except three months' notice pay envisaged in sub-clause (iv). After seven years, he filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') for payment of three months' notice pay amounting to Rs.16,455/- with interest at the rate of 24% per annum. The same was registered as CMP.No.5 of 2002. He claimed that three months' notice pay envisaged in para 2 (c)(iv) of the policy is an integral part of the monetary package payable to an employee seeking voluntary retirement and the management of the Port Trust cannot deny the same only on the ground that the application was accepted after three months of its submission.

In the counter filed on behalf of the Port Trust, an objection was taken to the very maintainability of the application under Section 33-C(2) on the ground that there was serious dispute on the entitlement of the applicant to receive the amount of notice pay and that such dispute cannot be adjudicated/resolved under Section 33-C(2) of the Act, which confers powers on the Labour Court akin to those of the executing court. It was further averred that the notice pay was not admissible to the applicant because he had drawn full salary by having worked for more than three months after submitting application for voluntary retirement.

By an order dated 6-6-2003, the Labour Court allowed the application. The learned Presiding Officer of the Labour Court referred to the judgment of the Supreme Court in **Motilal v. Superintendent, Government Press, Jodhpur and others**[1], on which reliance was placed by the counsel for the Port Trust, but distinguished the same and overruled the preliminary objection by recording the following reasons:

"On the important aspect touching the very maintainability of this application, learned counsel for respondent submitted that the entitlement of the petitioner to the claim of notice pay is very much in dispute as such the present application under Sec.33-C(2) is not maintainable. He relied on a decision reported in 1996 (2) LLJ at page 234 between Motilal and Superintendent, Government Press, Jodhpur & Others. On facts that was a case where Motilal while working on daily wage basis in a Government printing press, was paid some additional amounts. Basing on an internal Audit report, it was directed to recover the excess amount paid to Mr.Motilal.

Motilal contended the said amount was rightly paid and it cannot be recovered. But the amount was deducted from the salary of Motilal. Then he filed application U/s.33-C(2) of I.D.Act challenging the said recovery from his salary. The Labour Court dismissed the application observing Under Sec.33-C (2), the petition is not maintainable. It was held by Their Lordship, the procedure Under Sec.33-C (2) are in the nature of execution proceedings. Its object is to provide speedy and effective remedy for realization of the money or benefit due to a workman; in other words, to enforce and execution of existing rights. Where the claim is seriously and genuinely disputed and decision for ascertainment of the dispute is necessary, then such matters cannot be decided under Sec.33-C(2) unless the correctness and propriety of the order for recovery of the amount is adjudicated, the workman would not get the relief by means of an application under the above provision.

In the case on hand, it is a fact there is no award deciding the entitlement of the petitioner. Yet, in my opinion, the present application is maintainable for the reason that the denial by respondent of the 3 months notice pay is not genuine. The respondent admitted in its counter that the respondent issued circular dated 4.3.99 to take necessary steps to release notice pay in the light of the judgment in O.S.No.1059/95 and O.S.1060/95 and in the appeals A.S.No.171/98 and A.S.No.172/98 on the file of District Court, Visakhapatnam and directed to comply the Court orders wherever necessary in case of all employees who retired under Voluntary Retirement Scheme in whose cases their earlier applications were rejected and accepted again without taking fresh applications."

The learned Presiding Officer then relied on the judgments of the civil courts in O.S.Nos.1059 and 1060 of 1995 and A.S.Nos.171 and 172 of 1998 and held that notwithstanding the fact that the applicant worked for more than three months after submitting the application for voluntary retirement and drawn salary, he is entitled to three months' notice pay. Accordingly, he allowed the application with interest at the rate of 6%.

Similar orders were passed in favour of other employees who filed C.M.P.Nos.75, 76, 77 and 78 of 2004.

The appellant challenged the orders of the Labour Court in Writ Petition Nos.15113, 15114, 15115, 15116, 15117, 15118 and 15119 of 2003.

By a common order dated 07-11-2003, the learned Single Judge dismissed all the writ petitions. He referred to the contents of the policy, the judgments of the Supreme Court in **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad**[2] and of this Court in **S.**

**Nagabhushana Rao v. Hindustan Shipyard Ltd.**[3] and held that the Labour Court did not commit any error by directing the Port Trust to give notice pay to the workmen. Paragraph 10 of the order of the learned Single Judge, which contains the rationale of his conclusion, reads as under:

"10. From the above, it is clear that when once a cut off date has not been fixed under the Scheme, but a cut off date is fixed only while accepting the application of the employee, such date has to be taken into account not only for computing the terminal benefits under the Scheme but also the 'notice pay'. Though the learned counsel for the petitioners relied upon a decision of the Apex Court, the Apex Court did not take into account the date of submission of application as the criteria for computing the period of 'notice pay'. On the other hand, it is only the cut off date, which was fixed while accepting the application of the employees under the Scheme, which was taken into account and if any employee is continued after such cut off date for a period of three months or more, such employee was not entitled for the 'notice pay'. Admittedly, in the present case, it is not the case of the writ petitioner that any of the employee was continued after the cut off date fixed while accepting the application under the Scheme. All the employees, whose applications were accepted, were relieved on the cut off date fixed by the employer and in such a case, the employees are entitled for the 'notice pay', as none of them worked with the employer and has not drawn any salary after the cut off date. Further, as rightly held by this Court, the acceptance of the application of the employee under the scheme amounts to termination of service of the employee by the employer and 'notice pay' is required only after the acceptance of the application. Therefore, the unofficial respondents are entitled for three months 'notice pay' from the cut off date fixed by the employer. Further, as the writ petitioner has already accepted the judgment of the civil court and implemented it by paying the 'notice pay' with reference to the similarly placed other employees, there is no justification to deny the same benefit to the unofficial respondents herein. The clarification relied upon was issued with reference to the 1988 Scheme and there is no material also showing the same was communicated to the unofficial respondents. Therefore, there is no merit in the said contention."

The aforementioned order is under challenge in Writ Appeal Nos.2342, 2343, 2344, 2345, 2346, 2347 and 2348 of 2003.

In Writ Petition Nos.7214 and 7215 of 2006, the Port Trust has challenged orders dated 30-12-2005 passed by the Labour Court in C.M.P.Nos.75, 76, 77 and 78 of 2004 for grant of three months' notice pay to four employees, who sought voluntary retirement.

Sri P. Sri Raghu Ram, learned counsel for the Port Trust strongly relied on the judgment of the Supreme Court in **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad** (supra) and argued that the reason

assigned by the learned Single Judge for distinguishing the same is legally untenable. Learned counsel submitted that the object of giving one or three months' notice pay in terms of para 2(c)(iv) of the policy framed by the Government of India is to provide a monetary cushion to the employee seeking voluntary retirement so that he may not face acute financial difficulty immediately on being relieved pursuant to the decision of the competent authority to accept the application for voluntary retirement, and argued that such of the employees who were allowed to continue in service for three months or more after submission of the applications for voluntary retirement are not entitled to receive an amount equivalent to three months notice pay and the learned Presiding Officer of the Labour Court committed a jurisdictional error by granting relief to the private respondents. In support of this argument, Sri P. Sri Raghu Ram relied on para 3 of the clarification circulated by the Government of India vide letter No.LB-16012/10/92-L.II, dated 29-10-1992. He further argued that the reason assigned by the Labour Court for rejecting the objection to the maintainability of the application under Section 33-C(2) is legally unsustainable and the orders which were subject matter of the writ petitions are liable to be set aside because the procedure contemplated in that section is in the nature of execution proceedings and the Labour Court cannot make an adjudication on the substantive right of the workman to receive the particular amount. Sri P. Sri Raghu Ram also distinguished the judgment of the learned Single Judge in **S. Nagabhushana Rao v. Hindustan Shipyard Ltd.** (supra) by pointing out that the issue arising in these appeals and writ petitions was neither raised nor considered in that case.

Smt. A. Padma, learned counsel for the private respondents supported the orders of the Labour Court and learned Single Judge and argued that the Port Trust is under an obligation to give three months notice pay to an employee seeking voluntary retirement irrespective of the date on which he is relieved. She emphasised that delay on the part of the competent authority in accepting the application for voluntary retirement cannot be made basis for denying the benefit of notice pay to the employee in terms of para 2(c)(iv) of

the policy, else it would result in discrimination between similarly situated persons. She further argued that the applications filed by the private respondents under Section 33-C(2) of the Act were rightly entertained by the Labour Court because the objection raised by the Port Trust to the entitlement of the workmen to receive notice pay in terms of para 2(c)(iv) of the policy was illusory and wholly untenable.

We have given serious thought to the entire matter. Letter dated 29-8-1991 of the Government of India, vide which the policy of voluntary retirement was circulated, reads as under:

"Government of India
Ministry of Surface Transport
(Labour Division)

No.LB-16016/7/88-L.II New Delhi, 29th August, 1991

To
Shri P.V.R.K. Prasad,
Chairman,
Visakhapatnam Port Trust,
Visakhapatnam-530 035.

Subject: Voluntary Retirement Scheme for Port Trusts and Dock Labour Boards.

* * * * *

I am directed to say that the matter regarding introduction of a uniform Voluntary Retirement Scheme for officers, employees and workers of Port Trusts and Dock Labour Boards has been under consideration of the Government. After careful consideration it has been decided that Port Trusts and Dock Labour Boards can introduce Voluntary Retirement Scheme with a view to reducing surplus manpower subject to the following terms and conditions:-

2. (a) An employee who has completed 10 years of service or completed 40 years of age may seek voluntary retirement by a written request.

(b) The Port Trusts and Dock Labour Boards will have the right not to grant voluntary retirement for reasons to be recorded in writing.

(c) The terminal payments available to an employee who seeks voluntary retirement would be:

(i) the balance in his Provident Fund Account payable as per the GPF/CPF regulations applicable to him;

(ii) cash equivalent of accumulated earned leave as per the rules of the Port Trusts/Dock Labour Board;

(iii) gratuity as per Gratuity Act or the gratuity scheme applicable to the employee;

(iv) one month's / three months' notice pay (as per the conditions of service applicable to him).

(v) Pension as per the rules of the Port Trust/Dock Labour Board.

(d) In addition, an employee whose request for Voluntary Retirement is accepted would also be entitled to an ex-gratia payment equivalent to ½ months emoluments (pay plus Disciplinary Authority) for each completed year of service or the discounted value of the emoluments (at 12% rate of discount) that would have become payable for the balance months of service left, whichever is less. For example, an employee who has put in 24 years of service and has got only one year of service for normal retirement, he will get ex-gratia payment of only 12 months emoluments (pay plus Disciplinary Authority) discounted at 12% per annum and not 36 months' emoluments.

(e) In addition, the employee and his family would also be entitled to travel by the entitled class to the place where he intends settling down.

3. While introducing the voluntary retirement scheme, port trusts and Dock Labour Boards will make an assessment of surplus man-power taking into account the present and future operational requirements. While accepting the Voluntary Retirement of the employee, the port trust/dock labour board will also issue an order that the vacancy caused by the Voluntary Retirement would not be filled up and the post is abolished.

4. No claim of the dependents of the employees going on voluntary retirement for any compassionate appointment under the Port Trust/Dock Labour Board will be entertained.

5. The Voluntary Retirement Scheme would be financed by the Port Trusts/Dock Labour Boards from their own resources and no budgetary support in the form of loans will be granted by the Government.

6. Port Trusts and Dock Labour Boards can introduce a Voluntary Retirement Scheme on the above parameters, after seeking approval of the Ministry.

Yours faithfully,
Sd/-
(P.K. MISHRA)
Director."

Letter dated 29-10-1992 vide which the Government of India circulated clarification dated 29-5-1992 and para 3 thereof read as under:

"No.LB-16012/10/92-L.II New Delhi, the 29th Oct.,1992

To
The Chairman,
Cochin Dock Labour Board,
P.O.Box No.544,

Willingdon Island,
COCHIN-682 003.

Sub:- Voluntary Retirement Scheme – clarification – reg.

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Sir,

I am directed to refer to your D.O. Letter No.SEC/473/92/1973 dated 22-8-1992 on the above subject and to say that the matter has been examined in consultation with Finance Wing. Guidelines on VRS issued to Port Trusts and DLBs by this Ministry have been generally based on the guidelines of VRS issued by the Department of Public Enterprises for PSUs and, therefore, clarifications issued by DPE would be applicable to Port Trusts/Docks also. A copy of the clarification issued by the Department of Public Enterprises vide their O.M.No.2(36)/86-OPE(WC) dated 29-5-1992 is enclosed for necessary action.

Yours faithfully,
Sd/-
(S.S. Bharaj)
Desk Officer."

"Para-3

| | | |
|---|---|---|
| 3) | Should no at period pay be paid in all cases? | 3) If an application of an employee for voluntary retirement is accepted instantaneously & payment is arranged by the management on the same day, the concerned individual would be entitled to payment of ex-gratia as per the norms given in sub-paragraph (d) of paragraph 1 of the OM dt.5.10.88 along with the notice period pay. It is, however, clarified that payment of ex-gratia for service rendered or left over service before superannuation as well as the amount payable for the notice period should not exceed the basic pay plus DA, that would have been paid to the employees w h o has opted for voluntary retirement till the date of his superannuation. For example, if an employee opts for the voluntary retirement a few months before the date of superannuation, say, at 57 years & 10 months the payment should be restricted to 2 months basic pay plus Dearness Allowance.<br>In circumstances where the management takes time to take a decision about the accepted of an application submitted by the employee for voluntary retirement and allows the notice period to lapse or the individual concerned had drawn full salary during the notice period served by him, in these cases notices notice period pay would not be admissible as the individual has already drawn the salary during the notice period." |

The details of the applications made by the employees for VRS and the

dates of acceptance etc. are contained in a statement which is marked as Annexure-A to this judgment.

A careful reading of the policy contained in letter dated 29-8-1991 makes it clear that an employee could seek voluntary retirement on completion of ten years service or 40 years age. On acceptance of the application by the competent authority, the employee became entitled to receive the monetary package specified in clauses (i) to (v) of para 2 (c). The purpose of giving one month or three months' notice pay to an employee seeking voluntary retirement was nothing except to provide him cushion in the form of financial assistance or extra monetary benefit if he was asked to go immediately. The same purpose could be achieved if the concerned employee was allowed to continue in service after submission of the application for voluntary retirement. In **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad** (supra), the Supreme Court considered a question identical to the one raised in these appeals and writ petitions. The facts of that case were that APSIDC, which is a government company, floated VRS Phase I on 1-6-1995. After two years and about one month, the Corporation issued circular dated 4-7-1997 and invited applications from the employees who were eligible to seek retirement under the scheme. 416 employees gave their options for voluntary retirement. The Corporation accepted their options on 18-10-1997 treating 31-10-1997 as the cut-off date for the purpose of VRS. The employees were relieved from service on 15-11-1997. As per the scheme, the employees were entitled to three months' pay in lieu of notice. Since the employees had worked for 15 days beyond the cut-off date and earned salary for that period, they were given two months and 15 days notice pay in addition to 15 days salary. On 1-10-1997, the State Government issued a clarification in the following terms:

"in the circumstances where the management takes time to take a decision about the acceptance of the application of the employee and allows the notice period to lapse or the individual concerned has drawn all salary during the notice period, in these cases notice-period pay would not be admissible as the individual has already drawn salaries during the notice period".

After about two months, the Corporation issued VRS Phase-II. 212 employees including respondent Nos.1 to 32 in the appeal submitted their options for voluntary retirement. Their options were accepted fixing 28-2-1998 as the cut-off date for the purpose of calculating the VRS claims. The concerned employees were relieved from service on 31-7-1998. Since they were permitted to continue in service beyond the notice period of three months, they were given full salary and allowances up to 31-7-1998, but were not given notice pay. The employees challenged the decision of the management not to give them notice pay by filing writ petitions under Article 226 of the Constitution of India. Clauses (c), (d) and (i) of the scheme, which fell for consideration by the High Court were as under:

"(c) For calculation of VRS ex gratia, as well as reckoning eligibility, the date of acceptance of the application will be taken into consideration. Any increase in the salary after the cut-off point/date cannot be taken into consideration. However, for calculating the compensation for 'remaining period of service' wherever applicable, no compensation shall be paid for the period for which the salary has already been drawn by the employee after submission of VRS application.

(d) The VRS option exercised is final as far as employee is concerned.

(e) There shall be no separate notice either for the employee or the Corporation in terms of service conditions mentioned in the offer of appointment/service rules/SRS.

* * *

(i) The payments that are due from the Corporation under the Scheme shall be released to the concerned on the date of relief subject to receipt of funds from Government."

The amendment issued by the Government of Andhra Pradesh to the aforesaid scheme vide Memo dated 23-1-1996 was as under:

"1. (a) In the said memo, for the existing clause 6( *a* )( *iv* ) the following shall be substituted, namely:

'(iv). One month's/three months' notice pay (as per the conditions of service applicable).

If an application of an employee opting for voluntary retirement is accepted instantaneously and payment is arranged by the management on the same day, the individual concerned would be entitled to payment of ex gratia along with the notice-period pay. It is however clarified that payment of ex gratia for service rendered or leftover service (whichever is less) as well as the amount payable for the notice period should not exceed the basic pay plus DA that would have been paid to the employees who have opted for Voluntary Retirement Scheme till the date of his

superannuation.

In the circumstances where the management takes time to take a decision about the acceptance of an application submitted by the employee for Voluntary Retirement Scheme and allows the notice period to lapse or the individual concerned has drawn full salary during the notice period served by him, in these cases notice-period pay would not be admissible as the individual has already drawn the salary during the notice period. "

The learned Single Judge allowed the writ petitions and held that even though the employees were allowed to continue in service up to 31-7-1998, they were entitled to three months' notice pay which formed part of the package of VRS. The writ appeal preferred by the management was dismissed by the Division Bench. The Division Bench held that the action of the Corporation in not giving notice pay to the employees covered under the second phase of VRS was discriminatory and violative of Article 14 of the Constitution.

The Supreme Court referred to clause (c) of scheme dated 1-6-1995 and observed:

"In clause (c) of Annexure P-1 extracted above, it is expressly and clearly stated that the date of acceptance of the applications of the employees seeking voluntary retirement under the Scheme shall be the date for calculation of VRS ex gratia, as well as for reckoning eligibility. Added to this, it is also made clear that any increase in the salary after the cut-off point/ date cannot be taken into consideration. It is also stated that for calculating the compensation for "remaining period of service" wherever applicable no compensation shall be paid for the period for which the salary has already been drawn by the employees after submission of VRS applications. Clause (i) of the annexure states that the payments that are due from the Corporation under the Scheme shall be released to the concerned on the date of relieving subject to receipt of funds from the Government. This clause, in our view, has no bearing as far as the cut-off or effective date is concerned for the purpose of calculating the terminal benefits including VRS ex gratia and other benefits available under VRS, to which an employee is entitled, particularly so, when in clause (*c*), as already stated above, it is mentioned that for calculation of VRS ex gratia as well as reckoning its eligibility the date of acceptance of applications will be taken into consideration. Clauses (c) and (i) are meant to serve different purposes. One is for the purpose of calculation of the benefits in terms of money under VRS and the other is to see that the employee is not sent out without such payment. If that happens it will lead to great hardship to an employee without any financial support to carry on life. It is for that reason clause (i) appears to have been incorporated so that an employee is not rendered jobless. The payments that are due to be made by the Corporation under the Scheme depended upon the release of the funds by the

Government. If some time is taken in this process even after acceptance of the voluntary retirement application and an employee is not relieved from service, he is to be paid salary and allowances from the date of acceptance of voluntary retirement application/cut-off date till he is actually relieved from the service. The employee may continue in service in the interregnum by virtue of clause (i) but that cannot alter the date on which the benefits that were due to an employee under VRS were to be calculated. Clause (c) itself indicates that any increase in salary after the cut-off point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under VRS. It is further made clear that for the remaining period of service, wherever applicable, no compensation shall be paid for the period for which the salary has already been drawn by the employee after submission of application for voluntary retirement.

This being the position both the learned Single Judge and the Division Bench of the High Court were not right in taking a contrary view that the benefits available under the Scheme and terminal benefits should be reckoned and calculated as on the date of actual relieving of the employees notwithstanding the cut-off date mentioned by the Corporation and accepted by the employees. An employee even after accepting his application could not be relieved unless the entire amount to which he was entitled under the Scheme was paid. Such payment depended on making funds available by the State Government. All employees who accepted VRS could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available early or late. If the argument of the respondents that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is a matter of contract between the Corporation and the employees. It is not for the courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Schemes floated.

In the circumstances we are of the view that the terminal benefits and financial package available under the Scheme are to be calculated up to the cut-off date fixed for accepting the applications of the employees and not up to the date of their actual relieving from service. Hence the relevant date for the purpose of calculation of terminal benefits and benefits of VRS to the respondents was 28-2-1998 and not 31-7-1998."

The Supreme Court rejected the contention of the respondents that notwithstanding the fact that they were allowed to continue in service beyond the cut-off date, they were entitled to three months' notice pay and observed:

"In the present case admittedly the cut-off date fixed was 28-2-1998, which is not disputed. The contention was that since the employees continued to be in service till 31-7-1998, they were entitled to the retiral benefits and the benefits available under VRS as on 31-7-1998, the date on which they were actually relieved. While discussing the first point we have clarified the position in this regard. As per clause (e) of Annexure P-1 no separate notice was required to be issued in terms of service conditions mentioned in the offer of appointment/service rules/SRS. But once a cut-off date is fixed for the purpose of calculating the benefits under VRS and thereafter an employee is continued in service to satisfy clause (i) of Annexure P-1 and if that period happens to be three months or more, that itself shall be treated as notice period. In that case he shall not be entitled to notice-period pay again as is clear from the memo dated 1-10-1997 (Annexure P-3), on the ground that an employee having drawn full salary during the notice period although no separate notice was required to be given, would not be entitled to pay for the notice period. Even while dealing with the cases of VRS Phase I, the employees were given notice pay for two months 15 days and salary for 15 days. In those cases the Corporation had treated the cut-off date as 31-10-1997 but the employees were actually relieved from service on 15-11-1997, as the funds were not made available immediately. It clearly shows that for the period for which the employees even under VRS first phase worked for 15 days after the cut-off date they were not given notice pay for full three months. In the present case the cut-off date was 28-2-1998 but the respondents were actually relieved from service on 31-7-1998. Thus they worked for a period of five months after the cut-off date for which they had drawn salary. Out of these five months, three months would be adjusted towards notice pay as in VRS Phase I only 15 days were adjusted as notice pay as those employees had worked only for 15 days beyond the cut-off date. In the impugned judgment the Division Bench held that the Corporation could not discriminate between the employees of VRS Phase I and VRS Phase II. We fail to see how there was any discrimination. Unfortunately, the Division Bench of the High Court did not examine the issues that arose for consideration keeping in mind the relevant clauses, guidelines and specific terms contained in VRS including the amendment to the guidelines. Rights and benefits available to the employees under a particular VRS ought to be examined in the light of the specific terms and conditions governing them. Since this has not been done the Division Bench committed an error in recording its findings. On the other hand, there appears to have been consistency in the stand of the Corporation. Added to this the amendment as per Annexure P-3, reference to which has already been made above, justifies the stand of the appellants for the reasons that no separate notice was required to be given and if an employee had drawn the salary during the notice period, he would not be entitled to claim pay for notice period again. In this view we answer Point (2) in the negative and against the respondents."

In our opinion, the ratio of the above noted judgment is squarely

applicable to the cases in hand and the learned Single Judge committed serious error by distinguishing the same on the premise that there was no cut-off date in the VRS framed by the Government of India for the Port Trust. In our opinion, the cut-off date fixed by APSIDC, which was appellant before the Supreme Court, had no bearing on the entitlement of the employees to receive three months' notice pay. What the Supreme Court held that when the employees who submitted applications for voluntary retirement were allowed to continue in service, they could not claim notice pay. The policy contained in letter dated 29-8-1991 issued by the Government of India clearly specified the condition of eligibility as ten years service or 40 years age. Thus, only an employee who completed ten years service or 40 years age could seek voluntary retirement. If the application was accepted instantaneously, then the employee could get all the monetary benefits including notice pay in terms of para 2(c). However, there could be no rationale justification for claiming notice pay in terms of sub-clause (iv) of para 2(c) if the employee was allowed to continue in service and was relieved after three months or more from the date of submission of the application because during that period, the employee would have earned full pay and allowances. This position was amply clarified in para 3 of the clarification circulated vide letter dated 29-10-1992.

A careful reading of the judgment of the Supreme Court in **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad** (supra) shows that the clarification which fell for consideration in that case was almost identical to the one contained in the second part of paragraph 3 of the clarification circulated vide letter dated 29-10-1992. Therefore, there could be no justification for entertaining the claim of the respondents by ignoring the ratio of the law laid down by the Supreme Court.

On the basis of the above discussion, we hold that such of the respondents, who were relieved after more than three months of the submission of the applications for voluntary retirement, are not entitled to three months' notice pay and the Labour Court and the learned Single Judge committed legal error by entertaining and accepting their claim for three

months' notice pay.

The argument of Sri P. Sri Raghu Ram that the Labour Court did not have the jurisdiction to entertain the applications filed by the respondents under Section 33-C(2) and to decide the contentious issue relating to their entitlement to receive three months' notice pay in terms of para 2(c)(iv) of the policy and that, in any case, the applications ought to have been dismissed on the ground of laches, sounds attractive and finds considerable support from the judgment of the Supreme Court in **S.K. Kapur v. New Delhi Municipal Council**[4], but we are not inclined to accept the same and non-suit such of the private respondents who are entitled to notice pay for three months or the period which fell short of three months in accordance with the judgment in **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad** (supra). If the objection raised on behalf of the Port Trust had been entertained and accepted by the Presiding Officer of the Labour Court, then the concerned employees could have moved the High Court under Article 226 of the Constitution for grant of monetary benefits in accordance with the policy contained in letter dated 29-8-1991 and in all probability the High Court would have granted relief to them as per the ratio of the Supreme Court's judgment in **Vice-Chairman and Managing Director, APSIDC Ltd. V. R.Varaprasad** (supra). Therefore, at this stage, we do not consider it proper to deny the benefit of notice pay admissible to some of the private respondents.

In the result, the appeals and writ petitions are allowed. The order of the learned Single Judge and those passed by the Presiding Officer of the Labour Court in CMP.Nos.6, 12, 14, 13, 8, 5 and 9 of 2002, 75, 76, 77 and 78 of 2004 are ser aside. However, it is made clear that respondents – P. Narayana Rao, D. Raju, Y. Nooka Raju, B. Radhakrishna, M. Venkateswara Rao and B. Laxmi shall be entitled to three months' notice pay or the period which fell short of three months. The management of the Port Trust is directed to pay them the monetary benefits within one month of the submission/receipt of copy of this judgment.

**G.S. SINGHVI, CJ**

October 31, 2007

**G. ROHINI, J**

ARS/SVS

## ANNEXURE-A

STATEMENT

29.08.1991 Proceedings of Govt. of India – Ministry of Surface (Labour Division) in No.LB-16016/7/88-L.II Introducing VRS

04.11.1992 Proceedings of Govt. of India – Ministry of Surface (Labour Division) Clarification issued to the Original VRS

| | Case No./ Appeal No. | Dt. Of application For VRS by the empl. | Date of acceptance of VRS | Date of decree & judgment in OS No.1059/95 1060/95 | Date of Claim application filed before R-1 u/s.33 (c) (2) | Date of order passed by R.1 (Labour Court) |
|---|---|---|---|---|---|---|
| 2 | 03 | 04 | 05 | 06 | 07 | 08 |
| bu | WA No. 2347/03 Against WP No. 15113/03 | 08.05.1995 | 28.11.1995 Relieved on 1.12.1995 | 22.05.1998 | Aug, 2002 | 06/06/2003 in CMP No.5/2002 |
| ju | WA No. 2342/03 Against WP No. 15114/03 | 08.11.1994 | 28.11.1995 Relieved on 1.12.1995 | -do- | -do- | -do- 6/2002 |
| ıa Rao | WA No. 2346/03 against WP No. 15115/03 | 03.09.1993 | 15.11.1993 Relieved on 15.11.1993 | -do- | Oct, 2002 | -do- 8/2002 |
| | WA No. 2348/03 Against WP No. 15116/2003 | 11.02.1994 | 03.05.1994 Relieved on 7.5.1994 | -do- | -do- | -do- 9/2002 |
| nyeswara | WA No. 2343/03 against WP No. 15117/2003 | 13.12.1995 | 27.06.1996 Relieved on 1.7.1996 | -do- | Nov,2002 | -do- 12/2002 |
| aju | WA No. 2345/03 against WP No. 15118/2003 | 25.02.1994 | 03.05.1994 Relieved on 7.5.1994 | 22.05.1998 | Nov, 2002 | -do-13/2002 |
| Raju | WA No.2344/2003 against WP No. 15119/2003 | 04.05.1993 | 27.09.1993 Relieved on 5.10.1993 | -do- | -do- | -do- 14/2002 |
| rishnan | WP No. 7214/06 | 11.03.1996 | Relieved on 16.03.96 | -do- | Aug, 2004 | 30.12.95 CMP No.75/04 |

| | | | | | | |
|---|---|---|---|---|---|---|
| kateswara<br><br>i | WP No. 7215/06 | 04.04.2000<br><br>29.09.1999<br><br>16.02.2001 | Relieved on 31.07.2000<br><br>Relieved on 31.07.2000<br><br>Relieved on 31.3.2001<br><br>31.03.2001 | -do-<br><br>-do-<br><br>-do- | 02.07.2003<br><br>02.08.2003<br><br>02.07.2003<br><br>02.07.2003 | 30.1.2005 in 76/04<br>-do- 77/04<br><br>-do- 78/04 |

[1] 1996 (2) LLJ 234
[2] (2003) 11 SCC 572
[3] 1997 (4) ALT 681
[4] (2004) 10 SCC 679